

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

| | | |
|-------------------------|---|--------------------|
| MATTHEW KING, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 4:10CV2141 MLM |
| |) | |
| WILLIAM BARTON, et al., |) | |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

This matter is before the Court upon the motion of plaintiff, a civil detainee at Sexual Offender Rehabilitation and Treatment Services, for leave to commence this action without payment of the required filing fee [Doc. #3]. For the reasons stated below, the Court finds that plaintiff does not have sufficient funds to pay the filing fee. Furthermore, after reviewing the complaint, the Court will order the Clerk to issue process or cause process to be issued on the complaint.

28 U.S.C. § 1915(e)

Pursuant to 28 U.S.C. § 1915(e)(2)(B), the Court may dismiss a complaint filed in forma pauperis if the action is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief against a defendant who is immune from such relief. An action is frivolous if “it lacks an arguable basis in either law or in fact.” Neitzke v. Williams, 490 U.S. 319, 328 (1989). An action fails to

state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” Bell Atlantic Corp. v. Twombly, 127 S. Ct. 1555, 174 (2007).

In reviewing a pro se complaint under § 1915(e)(2)(B), the Court must give the complaint the benefit of a liberal construction. Haines v. Kerner, 404 U.S. 519, 520 (1972). The Court must also weigh all factual allegations in favor of the plaintiff, unless the facts alleged are clearly baseless. Denton v. Hernandez, 504 U.S. 25, 32-33 (1992); Scheuer v. Rhodes, 416 U.S. 232, 236 (1974).

The Complaint

Plaintiff is a civil detainee at the Sexual Offender Rehabilitation and Treatment Services Center in Farmington, Missouri. He brings this action pursuant to 42 U.S.C. § 1983 alleging a violation of his civil rights by defendants William Barton, Paula Moyers and Scott Jordan. Plaintiff asserts that defendants failed to protect him from assault by another detainee. The Court finds that plaintiff’s allegations survive initial review under 28 U.S.C. § 1915 and will order the Clerk of Court to issue process on defendants.

Accordingly,

IT IS HEREBY ORDERED that plaintiff’s motion to proceed in forma pauperis [Doc. #3] is **GRANTED**.

IT IS FURTHER ORDERED that the Clerk shall issue process or cause process to issue upon the complaint.

IT IS FURTHER ORDERED that, pursuant to 42 U.S.C. § 1997e(g)(2), defendant shall reply to plaintiff's claims within the time provided by the applicable provisions of Rule 12(a) of the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that this case is assigned to Track 5B.

Dated this 25th day of February, 2011.

/s/Mary Ann L. Medler

MARY ANN L. MEDLER

UNITED STATES MAGISTRATE JUDGE